

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of:)	
)	
ValueVision Media Acquisition, Inc.)	
)	CSR-6228-M
v.)	
)	
Full Channel TV)	
Channel Positioning Complaint		

MEMORANDUM OPINION AND ORDER

Adopted: November 24, 2003

Released: November 26, 2003

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. ValueVision Media Acquisition, Inc., licensee of television broadcast station WWDP(TV), Channel 46, Norwell, Massachusetts, ("ValueVision"), filed the above-captioned complaint against Full Channel TV, Inc. ("Full Channel") for its failure to carry WWDP at channel position 46 or a "mutually-agreeable channel" on Full Channel's cable television system serving the communities of Barrington, Bristol Township, Warren, and the unincorporated areas of Bristol County, Rhode Island (the "cable communities"). No opposition was filed by Full Channel. For the reasons discussed below, we grant the petition.

II. BACKGROUND

2. Pursuant to Section 614 of the Communications Act of 1934 ("Act"), as amended, and implementing rules adopted by the Commission in *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues*, ("Must Carry Order"),¹ commercial television broadcast stations are entitled to assert mandatory carriage rights, including certain mandatory channel position rights, on cable systems located within the station's market.

3. With respect to the channel number on which stations asserting must carry rights are to be carried, Section 614(b)(6) of the Act² and Section 76.57 of the Commission's rules provide

¹ 8 FCC Rcd 2965, 2976-2977 (1993).

² The legislative history of the 1992 Cable Act is replete with references concerning the need for channel positioning requirements. See, e.g., Conf. Rep. No. 102-862, 102d Cong. 2d Sess. (1992) at 75 ("The conferees find that the must carry and channel positioning provisions in the bill are the only means to protect the federal system of television allocations, and to promote competition in local markets.") and H.R. Rep. No. 102-628, 102d

(continued...)

commercial television stations with three channel positioning options.³ The station may elect to be carried on: (1) the channel number on which the station is broadcast over-the-air; (2) the channel number on which the station was carried on July 19, 1985; or (3) the channel number on which the station was carried on January 1, 1992.⁴ The Act and the rule also provide that a broadcast station may be carried on any other channel number mutually agreed upon by the station and the cable operator.⁵

4. The Commission has found that inconvenience, marketing problems, the need to reconfigure the basic tier, the need to employ additional traps, or the need to make technical changes are not sufficient reasons for denying the channel positioning request of a qualified television station.⁶ Only where placement of a signal on a chosen channel results in interference or degraded signal quality to the television station or an adjacent channel, or causes a substantial technical or signal security problem, did the Commission permit cable operators to carry a broadcast signal on a channel not chosen by the station.⁷ The Commission recognized that most systems were able to configure their basic service tier to fulfill this requirement.⁸ The Commission provided, however, that a cable operator claiming that it cannot meet a channel positioning request for technical reasons would have to provide evidence clearly demonstrating that it cannot meet its obligation.⁹

III. DISCUSSION

5. In support of its request, ValueVision states that the Commission previously granted petitioner's request for modification of WWDP's market to include the cable communities.¹⁰ Subsequently, ValueVision filed a mandatory carriage complaint against Full Channel to enforce the carriage rights granted by the Commission in the station's market modification proceeding. The Commission granted ValueVision's must-carry complaint and ordered carriage of the station.¹¹ The Commission also ordered ValueVision to inform Full Channel of petitioner's channel position election. ValueVision informed Full Channel in writing of the station's channel position election on Channel 46 "or any other lower numbered channel" in a timely fashion.¹² Full Channel began carriage of WWDP subsequent to the Commission's denial of the cable operator's petition for reconsideration of the station's

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Cong. 2d Sess. (1992) at 55 ("Channel position is important in ensuring the success of a signal carried on a cable system.")

³ 47 U.S.C. §534(b)(6); 47 C.F.R. §76.57.

⁴ 47 U.S.C. §534(b)(6); 47 C.F.R. §76.57(a).

⁵ 47 U.S.C. §534(b)(6); 47 C.F.R. §76.57(c).

⁶ *Must Carry Order*, 8 FCC Rcd at 2988.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* As part of such a showing, a cable operator must present evidence as to the costs involved in remedying the technical problem. *Implementation of the Cable Television Consumer Protection and Competition Act of 1992*, 9 FCC Rcd 6723, 6735 (1994); *see also Greater Dayton Public Television*, 10 FCC Rcd 1048 (1995) and *KDTV License Partnership*, 13 FCC Rcd 10331 (1998).

¹⁰ *See Norwell Television, LLC*, 17 FCC Rcd 16085 (2002).

¹¹ *See Norwell Television, LLC*, 18 FCC Rcd 1829 (2003), *recon. denied* 18 FCC Rcd 6584 (2003).

¹² Petition at Exhibit 1.

must-carry complaint, but placed the station on channel 95.¹³ ValueVision informed Full Channel in writing that such placement was not acceptable.¹⁴ Full Channel did not respond to ValueVision's request for carriage on Channel 46 or a lower numbered channel.¹⁵

6. In light of the information presented by ValueVision, and the lack of opposition, we grant the petition.

IV. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED**, pursuant to Section 614 of the Communications Act of 1934, as amended, 47 U.S.C. §534, that the complaint filed by ValueVision Media Acquisition, Inc. **IS GRANTED**.

8. **IT IS FURTHER ORDERED**, that Full Channel TV, Inc. **SHALL COMMENCE CARRIAGE** of WWDP on cable channel 46, or a mutually agreed upon channel, throughout its system serving the communities of Barrington, Bristol Township, Warren, and the unincorporated areas of Bristol County, Rhode Island within 45 days of the release date of this *Order*.

9. This action is taken pursuant to authority delegated under Section 0.283 of the Commission's rules.¹⁶

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert, Deputy Chief
Policy Division
Media Bureau

¹³ *Id.* at 4.

¹⁴ *Id.* at 4, Exhibit 2.

¹⁵ *Id.* at 5, Exhibit 3.

¹⁶ 47 C.F.R. §0.283.